

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HARALD KLOECKNER, GUENTER BERSCHEL,
WOLFGANG STRICKER, ANDREW DUDA,
and UDO HELLMANN

Appeal 2007-0416
Application 10/634,330
Technology Center 1700

Decided: January 29, 2007

Before KIMLIN, WARREN, and GAUDETTE, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 2-6 and 8-18.

Claim 2 is illustrative:

2. Method for painting plastic substrates, comprising the steps:
 1. applying a base coat layer consisting of a colour-and/or effect-imparting base coat directly to the plastic substrate,

2. evaporating and/or curing the base coat layer thus obtained,
3. applying a clear coat layer consisting of a transparent clear coat to the base coat layer obtained,
4. curing the clear coat layer obtained, optionally together with the base coat, wherein the applied colour- and/or effect-imparting base coat comprises
 - A) 30 to 90% by weight of a conventional base coat composition, comprising
 - Aa) at least one binder selected from the group consisting of polyurethane, acrylated polyurethane, polyacrylate, polyester, acrylated polyester and alkyd resins and any combinations thereof,
 - Ab) at least one colour and/or effect pigment,
 - Ac) at least one organic solvent and/or water and
 - Ad) optionally conventional paint additives and
 - B) 10 to 70% by weight of an adhesion-promoting composition B), comprising
 - Ba) at least one ethylene vinyl acetate copolymer,
 - Bb) at least one chlorinated rubber,
 - Bc) at least one chlorinated polyolefin and
 - Bd) optionally organic solvents and/or water and conventional paint additives,

wherein the sum of the portions of components A) and B) makes up 100% by weight;

wherein in step (1) of applying the base coat layer consisting of a colour- and/or effect-imparting coating composition consists of applying a colour- and/or effect-imparting coating composition containing the adhesion-promoting composition B) directly to the plastic substrate and subsequently applying a layer of a colour- and/or effect-imparting coating composition which does not contain the adhesion-promoting composition B).

The Examiner relies upon the following references as evidence of obviousness:

| | | |
|-----------|--------------|---------------|
| Heaps | 4,517,327 | May 14, 1985 |
| Corcoran | 5,279,862 | Jan. 18, 1994 |
| Hellmann | 5,412,000 | May 2, 1995 |
| Ozawa | 5,492,963 | Feb. 20, 1996 |
| Shiraishi | 6,670,414 B2 | Dec. 30, 2003 |

Appellants' claimed invention is directed to a method for painting plastic substrates comprising applying a base coat layer directly to the plastic substrate, curing the base coat layer, applying a clear coat layer to the base coat layer, and curing the clear coat layer. The base coat layer comprises one of the recited binders, a colour-and/or effect pigment, a solvent, and an adhesion-promoting composition comprising an ethylene vinyl acetate copolymer, a chlorinated rubber, and a chlorinated polyolefin. The base coat layer is applied in two stages: first, the base coat comprising the adhesion-promoting composition is applied, followed by "a layer of a colour-and/or effect-imparting coating composition which does not contain the adhesion-promoting composition."

The appealed claims stand rejected under 35 U.S.C. § 103(a) as follows:

(a) claims 2-8, 10-15, 17, and 18 over Hellmann in view of Ozawa and Shiraishi;

(b) claims 3, 12-15, 17, and 18 over Shiraishi in view of Ozawa;

(c) claims 2, 4-8, 10, and 11 over Shiraishi in view of Ozawa and Hellmann; and

(d) claims 9 and 16 over the combination of Hellmann, Ozawa, and Shiraishi further in view of Heaps and Corcoran.

Appellants do not present separate arguments for any of the claims in the separately rejected groups of claims. Accordingly, the separately rejected groups of claims stand or fall together.

We have thoroughly reviewed each of Appellants' arguments for patentability. However, we are in complete agreement with the Examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will sustain the Examiner's rejections for essentially those reasons expressed in the Answer.

We consider first the rejection of claims 2-8, 10-15, 17, and 18 over Hellmann in view of Ozawa and Shiraishi. Hellmann, like Appellants, discloses a method of painting plastic substrates, such as automobile parts, by applying to the substrate a first layer comprising a binder and the presently claimed color or pigment, solvent, conventional paint additive, ethylene vinyl acetate copolymer and a chlorinated polyolefin. Much is made of the fact by Appellants that Hellmann refers to its initial layer as a primer layer, and not as a base coat layer, and Appellants contend that there is a basic difference in the art between a primer layer and a base coat layer. However, having viewed the evidence presented by Appellants and the Examiner on this point, we are persuaded that the terms are used

interchangeably in the art. For instance, Shiraishi discloses that the same composition can be used as a base paint or a primer resin (*see* col. 5, ll. 53-54 and 64), and the Examiner properly points out that Scopazzi teaches that the coating composition can contain a pigment and serve as a base coat or a primer.

In any event, more significant than whether Hellmann's coating is labeled a primer or a base coat layer is the fact that Hellmann teaches coating an initial layer on a plastic substrate, such as an automobile part, that comprises a composition that contains all the recited components, with the exception of the recited binder and chlorinated rubber. While Hellmann discloses an epoxy binder, and Appellants amended the appealed claims to exclude an epoxy binder, it can hardly be gainsaid that the recited binders are conventional binders in base coat and primer layers. Indeed, claim 2 recites the base coat composition comprising the specified binders as "conventional," and Shiraishi evidences that the recited binders, such as alkyd resin, acrylic resin, polyester resin, polyurethane resin, etc. are equivalent to epoxy resin in a base paint or primer composition.

Accordingly, we are convinced that it would have been obvious for one of ordinary skill in the art to include one of the conventional claimed binders in the composition of Hellmann.

Also, while Hellmann discloses a chlorinated polyolefin, but not in conjunction with a chlorinated rubber, the Examiner accurately sets forth that chlorinated polyolefins are equivalent to or greater than traditional

chlorinated rubber in providing excellent film-forming properties and adhesional affinity for substrates (*see* Ozawa at col. 10, ll. 22-25).

Accordingly, we fully concur with the Examiner that one of ordinary skill in the art would have found it obvious to incorporate the claimed chlorinated rubber in combination with the chlorinated polyolefin of Hellmann with the reasonable expectation of obtaining equivalent or superior film-forming adhesive properties.

Appellants contend that the “[e]poxy resins [of Hellmann] cannot be used as topcoats or base coats since these resins are readily degraded by UV light [whereas] Applicants’ claims are directed to the use of only binder components that are stable to UV light exposure and weathering” (principal Br. 12, second para.). However, Appellants do not present objective evidence to factually support this assertion, which seems to conflict with Appellants’ specification disclosing the use of epoxy resins in the base coat layer (*see* Specification 6, 12-13).

Appellants also maintain that “primers do not contain the pigments that are required to provide the desired color to the painted plastic part” (principal Br. 12, last para.). However, this seems to be in conflict with the definition of “primer” set forth at page 10 of the principal Brief, namely, as “First complete coat of paint of a painting system applied to a surface.” In any event, for the reasons set forth above, we find no patentable distinction between the so-called base coat layer of Appellants and the primer of Hellmann.

We will also sustain the Examiner's § 103 rejection of claims 3, 12-15, 17, and 18 over Shiraishi in view of Ozawa. The composition of Shiraishi can be used as a base paint on a plastic substrate and comprises the presently claimed composition comprising a binder resin, ethylene vinyl acetate copolymer, chlorinated polyolefin, pigments, solvents, and paint auxiliaries. Although Shiraishi does not teach the inclusion of the claimed chlorinated rubber, we agree with the Examiner that Ozawa evidences the obviousness of adding a chlorinated rubber to the Shiraishi composition. Since Shiraishi teaches that the composition can be used as a base paint, we are convinced that it would have been obvious for one of ordinary skill in the art to add an additional paint layer on the base paint of Shiraishi, as is well-known in the art and evidenced by Hellmann. Appellants maintain that Shiraishi does not show or suggest the claimed method wherein "the first basecoat contains the adhesion promoting composition of ethylene vinyl acetate copolymer, chlorinated rubber and chlorinated polyolefin and the second layer is identical to the first layer but does not contain the adhesion promoting composition" (principal Br. 14-15). However, Appellants' argument is not commensurate in scope with the claim language on appeal. The claims do not require that the second layer is identical to the first layer with the exception of the adhesion promoting composition. For instance, claim 2 simply recites "subsequently applying a layer of a colour-and/or effect-imparting coating composition which does not contain the adhesion-promoting composition B)." The claimed second layer may comprise any

color coating composition, which may be different than the color composition of the first layer, and, furthermore, the second layer may also contain an adhesion-promoting composition different than the claimed B) composition.

For the reasons set forth by the Examiner and those given above, we will also sustain the Examiner's § 103 rejection of claims 2, 4-8, 10, and 11 over Shiraishi in view of Ozawa and Hellmann, as well as the § 103 rejection of claims 9 and 16 over the additional teachings of Heaps and Corcoran. We note that Appellants do not present a separate substantive argument with respect to the rejection of claims 9 and 16.

As a final point, we note that Appellants base no argument upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the prima facie case of obviousness established by the Examiner.

In conclusion, based on the foregoing, the Examiner's decision rejecting the appealed claims is affirmed.

Appeal 2007-0416
Application 10/634,330

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2004).

AFFIRMED

clj

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